

The Hon. Thomas O. Rice

HEATHER C. YAKELY
Evans, Craven & Lackie, P.S.
818 W. Riverside Ave., Suite 250
Spokane, WA 99201-0910
(509) 455-5200
hyakely@ecl-law.com
Attorneys for Defendant

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

ERIN FRANKLIN, as an individual
plaintiff, and the ESTATE OF JOHN
FRANKLIN, by and through Personal
Representative Erin Franklin;
BROCK FRANKLIN, BLAKE
FRANKLIN, and AVERY
FRANKLIN,

Plaintiff(s),

vs.

INTER-CON SECURITY
SYSTEMS, INC, and its Parent
Company TBD, by and through
others TBD,

Defendant(s).

Case No. 2:23-cv-00338-TOR

Spokane County Superior Court Case
No. 23-2-04486-32

DEFENDANT'S OPPOSITION TO
PLAINTIFFS' MOTION TO
REMAND

Hearing Date: January 22, 2024
Without Oral Argument

I. INTRODUCTION

Plaintiffs' motion attempts to remand this action to Spokane County Superior Court based on a misunderstanding of controlling legal authority. In the complaint, Plaintiffs allege that the Federal District Court for the Eastern District of Washington lacks subject matter jurisdiction over the allegations in the original

1 state complaint, and that additional defendants to be named related to their
2 corresponding motion to amend complaint will eliminate complete diversity
3 between all parties. The motion is based, in part, on the mistaken argument that
4 Defendant, Inter-Con Security Systems, Inc. (hereinafter “Defendant” or “Inter-
5 Con Security”) is a “local forum business entity,” and thus a “resident defendant.”
6 *Plaintiffs’ Motion*, pg. 6. Additionally, Plaintiffs’ claim that the alleged employee
7 of Defendant involved with the incident at the center of the lawsuit is a “forum
8 resident” and thus “deprives the federal court of subject matter jurisdiction.”
9 *Plaintiffs’ Motion*, pg. 11. This ignores the realities surrounding the corporate
10 status of Defendant, and its registration within Washington State.

12 Further, Plaintiffs’ claims relate to an incident that occurred at the property
13 located at 2410 E. Hawthorne Rd., Mead, WA 99021. *Complaint at ¶ 1.15*. The
14 Complaint further notes that Defendant Inter-Con Security Systems, Inc.
15 “contracts and contracted with the United States Department of Energy to provide
16 security for its Bonneville Power Administration...electric utility facility,” at the
17 aforementioned location. *Id.* This property, as reflected in records maintained by
18 the Spokane County Assessor’s Office, is owned, and was owned at the time of
19 the incident in question, by the United States Department of Energy (“Department
20 of Energy”), an executive department of the United States Federal Government.
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1 Plaintiffs' claims stem from an interaction on this property with a security guard
2 employed by Defendant, a government contractor providing private security
3 services on the premises. As such, this matter was properly removed to this Court,
4 as federal question jurisdiction exists under the federal enclave doctrine.

5 Defendant has not yet answered the Complaint as Plaintiffs filed a Motion
6 to Amend the Complaint. The hearing on the Motion to Amend is scheduled for
7 January 22, 2024. However, it will raise the federal enclave doctrine as an
8 affirmative defense. Regardless, the federal enclave doctrine is not an anticipated
9 federal affirmative defense. Instead, the doctrine is a subspecies of federal question
10 jurisdiction vested in federal district courts under 28 U.S.C. § 1331. Therefore,
11 any argument to the contrary presented by Plaintiffs would be contrary to federal
12 law. Further, established law provides that Plaintiffs cannot avoid federal
13 jurisdiction through sole reliance on state law contained in their Complaint.
14 Accordingly, this case is properly pending in this Court, and Plaintiffs' motion
15 should be denied.
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18 I. FACTS

19 Defendant Inter-Con Security is a California corporation with a principal
20 place of business located at 210 South De Lacey Avenue, Pasadena, California
21 91105. *ECF 1, pg. 1*. After a complaint was initiated against Defendant in Spokane
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1 County Superior Court, Defendant removed jurisdiction to this Court. *See ECF 1.*

2 In support of removal, Defendant attached the declaration of Caitlin Johnson,
3 Defendant's Assistant General Counsel, Litigation. *ECF 1, 2.* Ms. Johnson's
4 declaration notes as follows:

5 Inter-Con Security Systems is, and has been since 1973, domiciled in the
6 State of California. (See Exhibit A, Statement of Information.) Inter-Con
7 Security Systems provides services in the State of Washington but does not
8 do business by any other name, subsidiary or entity within the state of
9 Washington.

10 *ECF 2, pg. 3.*

11 Defendant is registered as a Foreign Profit Corporation within the State of
12 Washington. *See Declaration of Heather Yakely, Exhibit A.* Its principal office
13 street address is listed as 210 S. De Lacey Ave., Pasadena, CA 91105-2048. *Id.* At
14 the time of the incident described in Plaintiffs' complaint, Defendant was a
15 government contractor providing private security services at 2410 E. Hawthorne
16 RD, Mead, WA 99021. *Complaint at ¶ 1.15.* As previously noted, this property is
17 owned by the Department of Energy. *Declaration of Heather Yakely, Exhibit B.*
18 Defendant's corporate and contractor status, along with the location of the
19 property where the incident at issue occurred, establishes both subject matter and
20 federal question jurisdiction (pursuant to the federal enclave doctrine) in this
21 matter, thus establishing the present Court as the appropriate venue.

II. LAW AND ARGUMENT

A. This Court Maintains Subject Matter Jurisdiction Over This Matter.

1. Defendant Corporation is a California Citizen and the Amount in Controversy Exceeds \$75,000.00.

Matters can be removed from a state court and placed in a federal court only if the latter has subject matter jurisdiction over the case. *Farmer Bean & Seed, Ltd. Liab. Co. v. Pac. Grain & Foods, Ltd. Liab. Co.*, 495 F. Supp. 3d 981, 984 (E.D. Wash. 2020) (citing U.S.C. § 1441(a)). Subject matter jurisdiction is “generally conferred upon federal district courts through diversity jurisdiction...or federal question jurisdiction.” *Peralta v. Hispanic Bus., Inc.*, 410 F.3d 1064, 1068 (9th Cir. 2005) (citing to 28 U.S.C. § 1332 and 28 U.S. § 1331). Diversity jurisdiction applies for “all civil actions where the matter in controversy exceeds...\$75,000.00...and is between...citizens of different States.” *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006) (quoting 28 U.S.C. § 1332(a)(1)).

Corporations are considered citizens of the state where they are incorporated, and the state where their principal place of business is located. *See Johnson v. Columbia Properties Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). In *Goddard v. Jubilant Hollister Stier*, the defendant argued that its parent

1 company was based in Pennsylvania, and that the same provided oversight of the
2 defendant's "local administration, management, and operations." *Goddard v.*
3 *Jubilant Hollister Stier*, LLC, No. 2:23-CV-0004-TOR, 2023 U.S. Dist. LEXIS
4 69519, at *4-5 (E.D. Wash. Apr. 20, 2023). The plaintiff presented the following
5 evidence: (1) the defendant operated a local facility in Washington; (2) the
6 defendant registered (under a local address) a separate company entity from the
7 parent company with the Washington Secretary of State; and (3) "many" higher
8 level management employees resided in Washington. *Id.* at 5. The court ultimately
9 found that the defendant presented only conclusory evidence supporting its
10 assertion. *Id.* at 5-6.

12 Unlike the defendant in *Goddard v. Jubilant Hollister Stier*, Defendant here
13 has presented valid evidence and testimony (Ms. Johnson's Declaration, *ECF 2*)
14 establishing that Defendant is domiciled in California. The only "local resident"
15 noted in Plaintiffs' motion as having any employment connection with Defendant
16 is the "Doe security guard." *ECF No. 6, pg. 6*. This does not equate to the
17 defendant in *Goddard v. Jubilant Hollister Stier*, establishing that the parent
18 company had higher level management who were residents in the local forum
19 state. Furthermore, Plaintiffs' moving memorandum, without any supportive
20 citation, falsely refers to Defendant as a "local forum business entity." *ECF No. 6*,
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pg. 6. As shown in Ms. Johnson’s declaration and within Defendant’s registration filed with Washington State, Defendant is definitively **not** a “local forum business entity,” but rather a foreign corporation principally domiciled in California. The parties at issue here are domiciled in two separate states. Considering Plaintiffs’ lawsuit is premised on a wrongful death cause of action, the amount in controversy exceeds \$75,000.00. Accordingly, this Court maintains diversity jurisdiction over this matter.

2. Federal Question Jurisdiction Exists in This Matter Under the Federal Enclave Doctrine.

Territory transferred by a state to the federal government by sale or condemnation with the state’s consent constitutes a federal enclave. *Paul v. United States*, 371 U.S. 245, 264 (1963). For areas that are considered a federal enclave, only federal law will apply. *Id.* at 263. The United States Supreme Court has held that a “state may not legislate with respect to a federal enclave unless it reserved the right to do so when it gave its consent to the purchase by the United States. Only state law existing at the time of the acquisition remains enforceable, not subsequent laws.” *Id.* at 268,

Only federal law applies on a designated federal enclave under exclusive federal jurisdiction. However, to ensure federal enclaves feature a documented legal system for private rights, preexisting state laws not inconsistent with federal

1 law will become federal law and remain the same until changes in national
2 legislation. *Pacific Coast Dairy v. Depart. of Agriculture of Ca.*, 318 U.S. 285,
3 294 (1934).

4 In this matter, Plaintiffs argue generally that this Court does not possess
5 subject matter jurisdiction regarding the state claims at issue. Of course, as set
6 forth *supra*, this ignores the fact that this Court maintains diversity jurisdiction
7 over the matter. Moreover, the United States Congress holds exclusive legislative
8 jurisdiction over areas considered to be federal enclaves. As a result of this
9 legislative jurisdiction, “courts have reasoned that United States courts must also
10 have subject matter jurisdiction to adjudicate controversies arising on federal
11 enclaves.” *Blahnik v. BASF Corp.*, No. C.A. C-06-410, 2006 WL 2850113, at *3
12 (S.D. Tex. Oct. 3, 2006) (citing to *Mater v. Holley*, 200 F.2d 123, 124-125 (5th Cir.
13 1953); *Reed v. Fina Oil & Chemical Co.*, 995 F.Supp. 704, 713 (E.D. Tex. 1998);
14 *Akin v. Gig Three Industries, Inc.*, 851 F. Supp. 819, 822 (E.D. Texas 1994). As
15 such, federal enclave jurisdiction morphs into a subspecies of federal question
16 jurisdiction, which, as this Court is well aware, is a form of subject matter
17 jurisdiction promulgated under 28 U.S.C. § 1331. *Akin v. Ashland Chemical Co.*,
18 156 F.3d 1030, 1034 (10th Cir. 1998) (“Personal injury actions which arise from
19 incidents occurring in federal enclaves may be removed to federal district court as
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1 a part of federal question jurisdiction.”); *Celli v. Shoell*, 40 F.3d 324, 328 (10th Cir.
2 1994) (“federal enclave jurisdiction [is] a form of federal question jurisdiction.”).
3 Therefore, “[f]ederal courts have federal question jurisdiction over tort claims that
4 arise on ‘federal enclaves.’” *Blahnik v. BASF Corp.*, No. C.A. C-06-410, 2006 WL
5 2850113, at *3 (citing to *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1250
6 (9th Cir. 2006) (citing *Willis v. Craig*, 555 F.2d 724, 726 n. 4 (9th Cir. 1977))).

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8 In this instance, Inter-Con Security is a contractor operating on property that
9 is a federal enclave. While the alleged perpetrator was indeed a local employee,
10 their conduct took place on a federal enclave. (Complaint, para 1.15 and 1.16) As
11 such, the causes of action against that individual employee would still be subject
12 to the federal enclave doctrine. *See Scott v. Gino Morena Enter., L.L.C.*, et al., No.
13 SACV 14-02046 JVS (DFMx), 2015 WL 847160 at *3-4 (C.D. Cal. Feb 23, 2015)
14 (court determined there was federal question subject matter jurisdiction through
15 application of the federal enclave doctrine in matter involving a plaintiff who
16 worked in the barbershop at Camp Pendleton and alleged only tort claims under
17 state law.)
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19 In the event that Plaintiffs argue that federal question jurisdiction does not
20 exist because the federal enclave doctrine is a federal defense and jurisdiction is
21 only dependent on the actual claims rather than defenses, such argument would
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1 still not permit avoidance of federal removal. The federal enclave doctrine is not
2 segregated for use only as a defense. Instead, the doctrine acts as an independent
3 vector that gives rise to federal question jurisdiction. *Blahnik v. BASF Corp.*, No.
4 C.A. C-06-410, 2006 WL 2850113, at *3. Asserting the federal enclave doctrine
5 cannot be classified as a defense under the well-pleaded complaint rule, as removal
6 could still indeed be suitable in instances where federal law both displaced state
7 law and confers federal remedies on a plaintiff or compels the plaintiff to rely on
8 federal “propositions.” *Olig v. Xanterra Parks & Resorts, Inc.*, No. CV 13-15-
9 BLG-DLC-RKS, 2013 WL 3936904, at *2-3 (D. Mont. July 30, 2013) (citing
10 *Harper v. San Diego Transit Corp.*, 764 F.2d 663, 666 (9th Cir. 1985); *Swords v.*
11 *Plowshares v. Kemp*, 423 F.Supp. 1031, 1033 (N.D. Cal. 2005)). In this instance,
12 Plaintiffs must rely on such federal propositions, as their claims arise from the
13 conduct of the Defendant’s employee at the premises located at 1620 E.
14 Hawthorne Rd., Mead, WA 99021 which is a federal enclave.
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16 17 **III. CONCLUSION**

18 This Court has subject matter jurisdiction over this lawsuit, as both diversity and
19 federal question subject matter jurisdiction exist here. This is established by the
20 facts contained in all pleadings, and by the controlling case law and precedent
21 regarding both diversity and federal question subject matter jurisdiction.
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1 Accordingly, Plaintiffs' Motion should be denied. Defendants reserve the right
2 under 28 U.S.C. § 1453 (c)(1) to appeal in the event the matter is remanded.

3 DATED: December 22, 2023
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5 EVANS, CRAVEN & LACKIE, P.S.

6 By 
7 HEATHER C. YAKELY, WSBA #28848
8 Attorneys for Defendant
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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury of the laws of the United States, that on the 22nd day of December 2023, the foregoing was served on the following persons as indicated below:

<u>Counsel for Plaintiffs</u> Mary Schultz Mary Schultz Law, P.S. 2111 E. Red Barn Lane Spangle, WA 99031 Tel: (509) 245-3522, Ext. 1 Email: Mary@MSchultz.com	Regular mail, postage prepaid	<input type="checkbox"/>
	Personal delivery	<input type="checkbox"/>
	Email per electronic service agreement	<input checked="" type="checkbox"/>
	Other:	<input type="checkbox"/>

By /s/Heather C. Yakely
HEATHER C. YAKELY, WSBA #28848
818 W. Riverside Ave., Ste. 250
Spokane, WA 99201
(509) 455-5200
hyakely@ecl-law.com
Attorneys for Defendant